

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

June 20, 2003

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on June 20, 2003 at the offices of Weintraub Genshlea Chediak Sproul Law Corporation in Sacramento, California.

The following members were present in person:

Peter Bronson
Lynn Ernace
Rob Harris
Paul Pascuzzi
Tom Phinney

The following members attended telephonically:

Molly Baier
Dave Bertenthal
Radmila Fulton
Sandy Lavigna
Greg Lunt
Kathy Phelps
Mark Porter
Dan Schechter
Tracy Schweitzer
Dave Shemano
Geraldine Valdez

Rob Harris called the meeting to order at 10:05 a.m. Rob informed the Committee that Perry Landsberg had suffered a heart attack and remained hospitalized. Rob said he had a website address through which information on Perry's progress could be obtained.

1. Approval of Minutes: May 16, 2003.

The minutes of the May 16, 2003 meeting were amended to show that Tom Phinney attended the meeting in person. The minutes were approved unanimously as so amended.

2. Discussion of Start Time for September, 2003 meeting.

Rob will request that brochures for the State Bar Annual Meeting show a 9:30 a.m. starting time for the September 5, 2003 meeting.

3. Nomination and Election of Officers for 2003-2004 Term.

Nomination and election of a Secretary for the 2003-2004 term was deferred to the next meeting.

Rob Harris nominated Geraldine Valdez as Chair, and Peter Bronson as Vice Chair, for 2003-2004. The nominations were seconded and, after discussion, were approved unanimously.

4. Discussion of Current Applications for Membership on ILC.

The Committee discussed whether some or all of the membership applications already received should be discussed and voted on, or whether discussion should be deferred until all applications had been received. On Rob's motion, the Committee voted (with Molly Baier voting in opposition) to consider only the applications of Mark Porter and Colin Wied at this time. On motion of Peter Bronson, the application of Mark Porter was approved unanimously. On motion of Geraldine Valdez, the application of Colin Wied was approved unanimously.

5. Continued Discussion re Subcommittees, Volunteers, and Election of Vice Chairs: Legislation, Education, Publications, and Constituency/Outreach/Website.

After discussion, Rob moved that formal subcommittees (legislation, education, publications, and constituency/outreach/website) be created, and that each Committee member be asked to join one of the subcommittees. Geraldine moved that each subcommittee have a chair, and that volunteers for the chair positions be solicited. After discussion, both motions were approved unanimously.

It was decided that each Committee member should send an e-mail to Rob (even those who have already sent such e-mails) by June 27 to indicate the subcommittee(s) on which they are interested in serving. Rob said he will follow up with anyone who does not respond.

6. Programs.

A. Tom Phinney reported on the ethics program presented at the Spring Meeting. Because Adam Lewis cancelled his appearance at the last minute, Tom stepped in and participated on the panel. The program went well, but Tom expressed disappointment that only eight persons attended. Rob expressed the Committee's appreciation to Tom.

B. Radmila Fulton reported that plans for our family law program at the State Bar Annual Meeting are proceeding well.

C. There was discussion about the possibility of presenting a program at the Winter SEI in Santa Monica, set for January 23-25, 2004. The Committee decided to propose two programs: a bankruptcy primer for business lawyers to be prepared by Geraldine and Peter, and a program on asset sales to be prepared by Mark Porter.

D. There was further discussion concerning possible program topics for the State Bar 2004 Spring Meeting. The Committee decided to proceed with a program on fraud as an element of a bankruptcy case (Sandy Lavigna and Tracy Schweitzer) and a program on bankruptcy from the banker's perspective (if Lisa Fenning is available for it).

7. Website Report and Constituency Outreach Project.

A. E-Mail Lists and Reciprocal Announcements.

It was reported that the "Beverly Hills" model is working well, *i.e.*, asking local bar associations to inform their members of the opportunity to place their names on our constituency list. Bob Franklin will circulate his form solicitation.

Reports were given on progress with regard to the various bar groups:

Beverly Hills: Progress is ongoing. Peter Bronson reported that about 30 names have been submitted to Rob.

San Francisco: Mark reported that the Bar Assn. of San Francisco had not been helpful, and that he is working on a "solicitation letter" approach.

Sacramento and ABI: Lynn Ernce is working on a solicitation similar to the Bronson/Franklin model.

Central California: Cliff Stevens is to send an e-mail solicitation.

South Bay: Rob is continuing to work on assembling this list.

Los Angeles: Sandy reported that the L.A. County Bar Association will only sell us mailing labels; alternatively, the president of the insolvency committee is willing to let the ILC put an announcement in its publication. Greg Lunt agreed to be the addressee for responses to such announcement.

Alameda/Contra Costa Counties: Discussion was referred due to the absence of Eric Nyberg.

Santa Rosa: Completed.

San Diego: Completed.

B. Review and Discussion of Bob Franklin's Draft E-mail to Constituency List Recipients Advising of ILC Vacancies.

Bob's proposed letter was discussed, and a few small changes were agreed upon. It was decided that Geraldine would e-mail the revised document to Rob, who would forward it to

Susan Orloff for distribution. Members were also reminded to speak with acquaintances who might be candidates for ILC membership.

C. Report on Status of Website, Content, and Revisions.

Geraldine said she and Mike Buckley are updating the section's website to make it less confusing; to make forms easy to access; and to make certain that news is regularly updated in order to keep the site current. Geraldine and Mike will continue with the project..

8. Progress Reports on Current Projects.

A. A.B. 182 –Automatic Re-Indexing of California Exemptions.

Rob reported that the Senate Judiciary Committee has unanimously approved A.B. 182. The bill now goes to the Senate floor, and then to the Assembly floor due to Senate changes to the bill.

B. A.B. 690.

This bill passed in the Assembly long ago, has cleared the Senate Judiciary Committee, and is set to go to the Senate floor. There is no known opposition. The letter of support drafted by Molly will go out over Rob's signature.

C.. Status of Badges of Fraud A.L.P.

Rob said this ALP has been sent to the various sections for comment. Assuming no problems arise, the State Bar Board of Governors will then take it up, and the Bar will seek a legislative sponsor.

9. New Projects.

A. Discussion of Comment from Judges' Roundtable on Model Real Estate Order.

Kathy Phelps reported on comments on the Committee's form real estate sale order made at the Judges' Roundtable Breakfast at the California Bankruptcy Forum annual meeting in May. Judge Mund pointed out that a recent amendment to Rule 58 of the Federal Rules of Civil Procedure requires orders and findings of fact each to be contained in a separate document, and that if findings are included in the order, the order arguably does not become final for 150 days. This concern applies to other kinds of orders that include findings.

Paul Pascuzzi (with help from Tracy Schweitzer) will update the form real estate sale order to separate the findings and order. Paul also will send an electronic copy of the current version to the ListServ.

There was also some discussion regarding whether the Committee should develop a bank of forms.

B. C.C.P. § 697.530 – Perfecting Lien on California Assets of Foreign Corporation.

Discussion was tabled to the next meeting.

C. Continued Discussion of H.R. 975.

Rob will draft a comment supporting the ABA's position on attorney liability and venue for consideration at the Committee's July 25, 2003 meeting.

D. Continuing Discussion of C.C.P. § 708.110 et seq. (Secret Liens and Registering the Same).

Discussion was tabled to the next meeting.

10. Publications.

A. Status Report on Article for Business Law News.

It was reported that the deadline for submission of draft and final versions is still unknown.

B. California Legislative Bulletin.

Rob and Geraldine will create a report of committee activities over the past year and statement of current and planned activities.

C. Annual Review.

It was reported that the deadline for submissions is still unknown.

11. Legislative Liaisons' Report.

A. Recent State Bills.

Dan Schechter said there are no developments to report.

B. Federal.

There were no bills requiring action.

Discussion on S. 832 was tabled to the July 25 meeting; Rob, Sandy and Mark will report on it.

Discussion on H.R. 2 also was tabled to the July 25 meeting.

There was preliminary discussion concerning the PLLC Committee's draft ALP regarding adoption of the Uniform Limited Partnership Act. Rob will find out the intention of the PLLC committee. Peter agreed to assist as needed.

12. Other New Business – PLLC and Corporations Committee ALPs.

Following discussion, it was decided that Mark would let Rob know if it appears that some legislative proposal in this area should be considered.

13. Next Meeting.

The next meeting will take place July 25, 2003 in Geraldine Valdez's office in San Diego.

12. Meeting adjourned.

The meeting was adjourned at 12:45 p.m.

Peter Bronson
Secretary